

Local 103, International Brotherhood of Electrical Workers and Lucent Technologies Inc. and Communications Workers of America and its Local 1290. Cases 1–CD–1008 and 1–CD–1009

April 4, 2001

DECISION AND DETERMINATION OF DISPUTE
BY CHAIRMAN TRUESDALE AND MEMBERS
LIEBMAN
AND HURTGEN

The charges in this Section 10(k) proceeding were filed November 10, 1999, by Lucent Technologies Inc. (the Employer or Lucent), and by Communications Workers of America and its Local 1290 (Local 1290). The charges allege that Local 103, International Brotherhood of Electrical Workers (Local 103) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Local 1290. The hearing was held January 5, 6 and 20, February 9, and March 7, 2000, before Hearing Officer Lucy E. Reyes. The Employer, Local 103, and Local 1290 have filed posthearing briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Delaware corporation with its principal place of business in the State of New Jersey, is engaged in the business of manufacturing, distributing, selling, installing, and maintaining telecommunications equipment. During the past year, it purchased and received goods valued in excess of \$50,000 directly from points located outside the State of New Jersey, and received gross revenues in excess of \$50,000.

The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 103 and Local 1290 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

In the fall of 1999,¹ Lucent signed contracts to install switching equipment² at three locations in the Boston

area. Lucent assigned its employees (communication services technicians or installers), who are represented by Local 1290, to perform the installation work. The Employer and Local 1290 are parties to a collective-bargaining agreement covering a unit of employees, including communication services technicians.

One of Lucent's contracts to install switching equipment was with Adelphia Business Solutions of Somerville. Tishman Construction, the general contractor on renovation work at the site, hired the necessary subcontractors for the renovation work, including electrical firms which employed Local 103–represented employees.

On October 18, a Lucent employee arrived at the Adelphia site to oversee delivery of equipment. Numerous building trades employees had already arrived at work. On October 21, Local 103 Business Manager Richard Gambino expressed his concerns about "community standards" to Tishman's project manager, Harry McCall. That same day, Local 103 Business Agent Bill Corley told Tishman Supervisor Steven Lazzaro that Local 103 planned to picket the site because Lucent was nonunion and was doing Local 103's work. When Lazzaro informed Corley that Lucent employed Local 1290–represented workers, Corley responded that the work "belonged to Local 103" and that Local 103 was having the same problem with Lucent at the Macy's site on Summer Street.

Local 103 members picketed the Adelphia site on October 22 with a "community standards" message directed at Lucent. Only Lucent's installers and nonunion employees worked that day. McCall asked Gambino if the trades would return to work if Tishman pulled the Lucent employees off the job. Gambino replied that they would.

On October 25, Lazzaro asked Lucent employees to leave the jobsite. Lazzaro signed a document stating that he asked Lucent to leave because of a "problem pertaining[ing] to IBEW Local 103."

On November 2, McCall provided Local 103 with information that Local 1290 had the authority to perform installation work for Lucent. The next day, Gambino replied that Local 103 did not recognize Local 1290 and that "[w]e [Local 103] want the work, and that we're [Local 103] going up against Lucent on a lot of other installations, and we want to get this work."

Lucent employees returned to the Adelphia site on November 5. Local 103 resumed picketing on November 9 for 2 weeks at which time Adelphia asked Lucent to leave the site.

¹ All subsequent dates refer to 1999 unless otherwise indicated.

² "Installing switching equipment" refers to the installation of the powerplant which brings electricity to the switch component, a toll which connects telephone and data transmission lines to the switch

component, and the switch component which routes telephone and data transmissions to their ultimate destinations.

During this same time period, Lucent contracted with ICG Communications to install switching equipment at a building on Summer Street in Boston (the Macy's site). Geary Corporation, the general contractor, hired subcontractors, including several which employed Local 103-represented employees.

ICG Project Manager Vasilios Kalaiatzidis testified that Local 103 members informed him that carrying material into the facility and installing the superstructure was Local 103's work, and that there would be "problems" if Local 103 did not get the work.³ Kalaiatzidis spoke with Local 103 Business Agent Michael Monahan about the conduct of the Local 103 members. Monahan told Kalaiatzidis that the powerplant installation work, the delivery of the powerplant, and the installation of the power structure belonged to Local 103.

Lucent did not begin work for ICG on November 1, as scheduled, because Local 103 set up a picket line, preventing Lucent employees from receiving delivery of equipment and materials. After filing the instant unfair labor practice charge, Lucent commenced the delivery of equipment to the site.

Also during the same time period, Lucent contracted with AT&T Local Services (ALS) to install the powerplant portion of a switching system at 451 D Street in South Boston. Lucent began receiving delivery of equipment at the jobsite on October 15.

On October 25, Local 103 members picketed the ALS site with signs directed at Lucent referring to "unfair wages and benefits." On October 26, ALS reported to Lucent employees that it was shutting down the job because Local 103 refused to work if Lucent employees were at the site. Lucent left the site.

B. Work in Dispute

The disputed work⁴ consists of the installation of the telecommunications systems, including but not limited to

³ Kalaiatzidis testified that based on discussions he had with the building management company, he concluded that Local 103 intended to strike at the jobsite if Lucent came into the building.

⁴ The parties did not stipulate to the description of the work in dispute. Local 103 asserted at the hearing that it sought only the powerplant portion of the work and, in its brief to the Board, concedes that the switching component portion of the disputed work was properly assigned to employees represented by Local 1290.

The record, however, does not support Local 103's claim that it sought only a portion of the work described in the notice of hearing. At the time of the events that are the subject of this proceeding, Local 103 business agents did not assert that only a portion of the work Lucent performed should be assigned to Local 103-represented employees. Rather, the preponderance of the evidence shows that Local 103 business agents claimed that all the work contracted to Lucent at the three locations belonged to Local 103-represented employees. We find that the record supports the description of the work in dispute as set forth in the notice of hearing.

the delivery of the DC powerplant from the vendor, the installation of the superstructure, the installation of the DC powerplant, and the installation, turn up, and testing of the Lucent 5ESS switching equipment at the following job locations: 70 Inner Belt Road, Somerville, Massachusetts; 1 Summer Street (Macy's), Boston, Massachusetts; and D Street, South Boston, Massachusetts.

C. Contentions of the Parties

The Employer and Local 1290 contend that there is reasonable cause to believe that Local 103 violated Section 8(b)(4)(D) of the Act. They further contend that the work in dispute should be assigned to the Employer's present employees represented by Local 1290 on the basis of the Employer's collective-bargaining agreement with Local 1290 covering these employees; company preference and past practice; area practice; relative skills; and economy and efficiency of operations.

Local 103 asserts that it picketed the Lucent sites to protest Lucent's failure to meet area wage standards. Local 103 contends that, in the event that the Board finds that a jurisdictional dispute exists, the Board should award the work in dispute to employees represented by Local 103.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

Local 103 contends that it picketed the three jobsites involved herein in furtherance of an area standards objective. It does not contend that its area standards concern was its *only* objective. In fact, in its brief, Local 103 virtually concedes that its actions may establish reasonable cause to believe that it violated the Act.⁵

The record discloses the following:

- (1) A Local 103 business agent stated that Local 103 planned to picket the Adelphia site because Lucent was nonunion and was doing Local 103's work;

⁵ In its posthearing brief, Local 103 states:

For purposes of this Hearing and the Section 10(k) "reasonable cause" standard, the Electrical Workers have not presented witnesses and posed credibility conflicts regarding the "jurisdictional" elements of these [conversations involving Local 103 personnel]. We will point out the arguments and supportive facts suggesting fully legitimate motives of Local 103 personnel, despite the legal reality that evidence of "mixed" objectives may still support "reasonable cause."

(2) after being told that Lucent was not nonunion, the business agent replied that the work belonged to Local 103;

(3) the business agent then announced that Local 103 was having the same problem with Lucent at the Macy's site;

(4) on another occasion, a Local 103 business agent told the Adelphia project manager that Local 103 did not recognize Local 1290, that Local 103 was going up against Lucent on a lot of other installations, and that Local 103 wanted the work;

(5) a Local 103 business agent, when asked to explain statements by Local 103 members that there would be "problems" if Local 1290 employees were assigned the disputed work at Summer Street (Macy's), asserted that the Summer Street work was Local 103's work; and

(6) Local 103 picketed the Adelphia and D Street sites after making statements claiming the disputed work.

On the basis of the foregoing, we find reasonable cause to believe that Local 103 violated Section 8(b)(4)(D) of the Act. The evidence summarized shows that Local 103 claimed the work in dispute at locations where Lucent was doing "Local 103's work," and picketed at the Adelphia and D Street sites. We find there is reasonable cause to believe that an object of Local 103's conduct at the three sites was to force the Employer to assign the work in dispute to individuals Local 103 represents. *Plumbers Local 130 (Contracting Co.)*, 272 NLRB 1045, 1046-1047 (1984); *Plasterers Local 383 (W.E. O'Neil Construction)*, 266 NLRB 821, 822 (1983). Even if Local 103's conduct also had an area standards purpose, one proscribed object is sufficient to bring a union's conduct within the ambit of Section 8(b)(4)(D). *Longshoremen ILA (Reserve Marine Terminals)*, 317 NLRB 848, 850 (1995).

No party contends, and there is no evidence, that there exists an agreed-upon method for the voluntary adjustment of the dispute which would be binding on all the parties within the meaning of Section 10(k) of the Act. Accordingly, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense

and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certifications and collective-bargaining agreements

The Employer and Local 1290 have an existing collective-bargaining agreement covering communication services technicians who perform the work in dispute. The Employer has never had a collective-bargaining agreement with Local 103. Accordingly, we find that the factor of collective-bargaining agreements favors an award of the work in dispute to employees represented by Local 1290.

2. Employer preference and past practice

The Employer prefers to assign the work in dispute to employees represented by Local 1290. The Employer has performed the type of work in dispute for many years using employees represented by Local 1290. Accordingly, we find that the factor of employer preference and past practice favors an award of the disputed work to employees represented by Local 1290.

3. Area and industry practice

As noted, employees represented by Local 1290 have performed the disputed work for the Employer for many years. The Employer asserts that Local 1290 installers are the only installers of the 5ESS switch and related Lucent equipment in the Boston area. Local 103 contends that its members have installed systems similar to the Lucent systems installed by employees represented by Local 1290. We find that the evidence is inconclusive as to area and industry practice and therefore this factor does not favor an award of the disputed work to employees represented by either union.

4. Relative skills

The evidence is clear that the work in dispute is complex and that employees represented by Local 1290 performing such work receive particularized training to perform their work tasks.⁶ Although Local 103 argues that its members' training is extensive and transferable to Lucent equipment, Local 103 concedes that its members have no training on Lucent equipment. We find that this factor favors an award of the disputed work to employees represented by Local 1290.

⁶ Mark Coleman, a Local 1290 member, testified that he has received training at power schools and electronic switching school and has received training to lay out floors and to put together electronic switches and cross-bar switches.

5. Economy and efficiency of operations

The evidence establishes that the Employer's own employees represented by Local 1290 have been specifically trained in the use of and installation of the Employer's equipment and are therefore familiar with the work in dispute, and that this work is intense, concentrated over a short period of time, highly coordinated, and requires particularized training. There is no evidence that assignment of the work to employees represented by Local 103 would be as economical and efficient. Accordingly, this factor favors an award of the disputed work to employees represented by Local 1290.

6. Licensing requirements

Local 103, citing *Sheet Metal Workers Local 17 (Park L. Davis Co.)*, 296 NLRB 14 (1989), relies on the testimony of a City of Boston electrical inspector, who expressed his opinion that, under Massachusetts General Laws, chapter 141,⁷ the powerplant portion of the disputed work must be installed by a licensed electrician. The Employer contends that chapter 141 does not apply to the work in dispute.

In *Park L. Davis*, the Board stated that, as a general rule, licensing requirements are not a factor for awarding disputed work where they concern only the employer's qualification to perform the disputed work, or where the applicability of the regulation is unclear. In that case, however, the Board found the licensing requirements were relevant to the awarding of disputed work. The critical fact was that the record contained a definitive interpretation by the relevant board of state examiners as to the applicability of the licensing requirement to work similar to the work in dispute. Thus, the Board was "not being asked to interpret a statute or ordinance." *Id.* at 17.

Here, in contrast, the record contains no definitive interpretation of chapter 141's applicability to the work in dispute. Instead, all the record shows is an individual's opinion as to chapter 141's applicability. In other words, in order to agree with Local 103, we must interpret the regulation on which Local 103 relies. In *Park L. Davis*, *id.* at 16, the Board made clear that it would not rely on licensing requirements where "the Board [is] requested to make an interpretation of the regulation."

We find, accordingly, that chapter 141 is irrelevant to a determination of this dispute. *Electrical Workers IBEW Local 134 (International Telephone)*, 191 NLRB 828 (1971).

Conclusions

After considering all the relevant factors, we conclude that the employees represented by Local 1290 are enti-

tled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and past practice, relative skills, and economy and efficiency of operations.

In making this determination, we are awarding the work to employees represented by Local 1290, not to that Union or its members.

Scope of the Award

The Employer and Local 1290 request that we issue a broad order applicable to all switching equipment installation work performed by the Employer within all geographical areas in which the jurisdictions of Local 1290 and Local 103 coincide. Normally, 10(k) awards are limited to the jobsite where the unlawful 8(b)(4)(D) conduct occurred or was threatened. There are two prerequisites for a broader award: (1) there must be evidence that the work in dispute has been a continuous source of controversy in the relevant geographic area and that similar disputes may recur; and (2) there must be evidence demonstrating the offending union's proclivity to engage in further unlawful conduct in order to obtain work similar to that in dispute. See *Electrical Workers IBEW Local 363 (U.S. Information Systems)*, 326 NLRB 1382 (1998).

The instant case involved disputes over work performed by Lucent at three separate locations of three different customers over a 1-month period. In *Teamsters Local 282 (Mount Hope Trucking)*, 316 NLRB 305, 309 (1995), the Board gave the same broad award as is sought here based on "two separate incidents [in a 2-month period], on two different jobsites, involving different contractors." The Board relied, in addition, on evidence that an official of the respondent union had threatened that "he was going to have strikes at other jobsites and that there would be a problem wherever Mount Hope went." In this case, there is comparable evidence that, after Local 103 had picketed against the presence of Lucent employees represented by Local 1290 at the Adelphia jobsite, Local 103's business manager told the project manager for the general contractor that "we're [Local 103] going up against Lucent on a lot of other installations, and we want to get this work." (Emphasis added.)

Based on the foregoing, we find that there is sufficient evidence both of a likelihood of recurrent work disputes in the geographic area where Local 103 and Local 1290 have concurrent jurisdiction and of a proclivity on the part of Local 103 to engage in further unlawful conduct to obtain work similar to that dispute.⁸ Accordingly, our

⁷ Chapter 141 is a state licensing statute.

⁸ See also *Electrical Workers IBEW Local 98 (Lucent Technologies)*, 324 NLRB 226, 229 (1997), and *Electrical Workers IBEW Local 98 (Lucent Technologies)*, 324 NLRB 230, 232-233 (1997). Those cases

determination in this case applies to all similar disputes involving the Employer where the geographical jurisdictions of Local 1290 and Local 103 coincide.⁹

involved threats and picketing by the charged party union against Lucent's presence at the jobsite of one contractor from late March through April 4, 1996, followed by the same union's picketing against Lucent for the same disputed work at another contractor's jobsite on July 21. Although the record in each case was developed in separate 10(k) proceedings, the Board gave consideration to both records when making broad awards in both cases in decisions issued on the same day.

We find that none of the cases cited by our dissenting colleague to justify denial of a broad award are as applicable to the facts of this case as the cases discussed above. *Carpenters Local 13 (First Chicago)*, 331 NLRB No. 37 (2000), involved two incidents 9 months apart, the earlier of which was not the subject of an unfair labor practice charge. Employees represented by the charged party were awarded the work in dispute in *Laborers Local 210 (Concrete Cutting & Breaking)*, 328 NLRB 1314 (1999), so a broad award adverse to the other claiming union was obviously not appropriate there. As for *Ironworkers Local 3 (P. J. Dick Contracting)*, 267 NLRB 950, 953 (1983), the Board reasonably found that "[i]n light of the substantial number of [the employer's] area projects, two jurisdictional work disputes before the Board over a 4-year period cannot justify an award reaching beyond the present jobsite." *Id.* at 953 (emphasis added).

⁹ Member Liebman would not grant a broad order in this case. The Union's conduct at issue occurred within a short time span, was the subject of charges filed on the same day, and resulted in the one proceeding before us. Unlawful conduct that overlaps in time, and none of which is in defiance of a Board order, falls short of establishing that the work in dispute has been a continuous source of controversy in the area, that similar disputes are likely to arise in the future, or that Local 103 has a proclivity to engage in further unlawful conduct to obtain similar work. *Carpenters Local 13 (First Chicago)*, 331 NLRB No. 37 (2000); *Laborers Local 210 (Concrete Cutting & Breaking)*, *supra*. See also *Ironworkers Local 3 (P. J. Dick Contracting)*, *supra* (two jurisdictional disputes before the Board do not justify a broad order).

Although in *Mount Hope*, cited by the majority, the Board granted a broad order based on events at two locations that were consolidated in one proceeding, the record contained statements by the offending union that clearly extended beyond the two locations and expressly promised

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Lucent Technologies Inc., represented by the Communications Workers of America and its Local 1290, are entitled to perform the installation of the telecommunications systems, including but not limited to the delivery of the DC powerplant from the vendor, the installation of the superstructure, the installation of the DC powerplant, and the installation, turn up, and testing of the Lucent 5ESS switching equipment where the jurisdictions of Local 1290 and Local 103, International Brotherhood of Electrical Workers coincide.

2. Local 103, International Brotherhood of Electrical Workers, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Lucent Technologies Inc. to assign the disputed work to employees represented by it.

3. Within 14 days from this date, Local 103, International Brotherhood of Electrical Workers shall notify the Regional Director for Region 1 in writing whether it will refrain from forcing Lucent Technologies Inc., by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

future "strikes" and "problem[s]." In contrast, the Local 103 statement on which the majority relies is ambiguous at best. Even assuming arguendo that the Local 103 business agent was making reference to *future* jobsites, he made no promises, or threat, of any future strike or problem. Rather, the statement is limited to the work in dispute in the instant proceeding. Thus, Member Liebman does not believe it appropriate, particularly when the conduct is not in defiance of any Board order, to find that Local 103 has shown a proclivity to engage in unlawful conduct in the future.